Remarks/Arguments

In the Final Office Action dated October 1, 2008, it is noted that claims 1, 2, 4-11, and 23-45 are pending; that claims 11 and 37 stand rejected under 35 U.S.C. §112, first paragraph; and that claims 1, 2, 4-11, and 23-45 stand rejected under 35 U.S.C. §103.

By this response, claim 1 has been amended as shown above in order to clarify an aspect of the subject matter defined therein; claims 1, 4, and 9-11 have been amended to clarify the antecedent for the "second authorized device" as shown above; claims 4, 9, and 11 have been amended to include limitations similar to those in claim 1 found in original, now cancelled, claim 3; claims 11 and 37 have been amended to clarify an aspect of the defined subject matter as discussed in detail below; and claim 41 has been amended to include the limitation from claim 43, which latter claim is now cancelled. The former amendment to claim 1 is supported by the original specification at least at page 11, lines 26-32. The amendments to the claims are believed to be proper and justified. No new matter has been added.

Rejection of Claims 11 and 37 under 35 U.S.C. §112

Claims 11 and 37 stand rejected under 35 U.S.C. §112, first paragraph, for failing to comply with the written description requirement. In view of the amendments to these claims, this rejection is respectfully traversed.

Claim 11 now calls in part for "receiving a contact from the second authorized device before exercising the subright by the second authorized device." This limitation is supported by the original specification at page 8, lines 23-26, where it is stated that "the second authorised device must contact the first authorised device, which stores the master right [,] before exercising the subright". It should be noted that this limitation is recast in claim 11 to be recited properly from the perspective of the first authorized device.

Claim 37 has been amended to recite in part that "the processor is configured to contact the other device before exercising the subright". This limitation is supported by the original specification at page 8, lines 23-26 reproduced above.

Since claims 11 and 37 have been amended to be consistent with and supported by the original specification as discussed above, it is submitted that these claims meet the written description requirement of 35 U.S.C. §112. Since claims 11 and 37 are believed to be allowable as amended, it is respectfully requested that this rejection be withdrawn.

Cited Art

The following references have been cited and applied against the claims in the present Office Action: U.S. Patent 7,010,808 to Leung et al. (hereinafter "*Leung*"); U.S. Patent Application Publication No. 2004/0103312 to Messerges et al. (hereinafter "*Messerges I*"); and U.S. Patent Application Publication No. 2004/0088541 to Messerges et al. (hereinafter "*Messerges II*").

Rejection of Claims 1, 2, 4, 8-11, 23-42, and 44-45 under 35 U.S.C. §103

Claims 1, 2, 4, 8-11, 23-42, and 44-45 stand rejected under 35 U.S.C. §103 as being unpatentable over Leung in view of Messerges I. Claim 43 has been cancelled. This rejection is respectfully traversed.

Claims 1, 4, 9-11, 31, 36, 41, 44, and 45 are independent base claims. Claims 2, 8, and 23-30 depend ultimately from claim 1; claims 32-35 depend directly from claim 31; claims 37-40 depend ultimately from claim 36; and claim 42 depends directly from claim 41.

Claim 1, as amended, calls for:

> *A method for performing digital right management in a network, the method comprising:*
>
> *storing, in a first authorized device, a master right associated with a content, which master right controls what type of access the first authorized device has to the associated content;*
>
> *deriving a subright from the master right, which subright controls what type of access a second authorized device is given to the associated content;*
>
> *distributing the subright to the second authorized device, given if it is determined by at least the first authorized device that the second authorized device complies with a predetermined distribution criterion associated with the master right;*
>
> ***measuring a distance between the first authorized device and the second authorized device, and***
>
> ***allowing, by means of exercising the subright, the second authorized device access to the associated content if the distance between the first authorized device and the second authorized device is smaller than a maximum access distance.*** [Emphasis added].

Neither Leung nor Messerges I teach, show, or suggest the limitations from claim 1 shown in boldface type above.

Leung does not teach, show, or suggest the measurement or use of distance for allowing access to protected content. First, the present Office Action indicates that Leung teaches these limitations at col. 2, lines 40-46. *See Office Action at page 6, lines 10-12.* But this citation from

Leung is completely inapposite to the limitations to which it is applied in claim 1. The cited portion of Leung is reproduced below as follows:

> *In the present invention, digital content is rendered on a device by transferring the content to the device and obtaining a digital license corresponding to the content. A sublicense corresponding to and based on the obtained license is composed and transferred to the device, and the content is rendered on the device only in accordance with the terms of the sub-license.*

But a careful inspection of this passage makes it clear that Leung does not even remotely suggest performing a measurement between devices for any purpose whatsoever. Moreover, Leung fails to suggest that exercise of the sublicense rights are subject to any criterion based on distance. Finally, on the same page of the Office Action cited above, it is stated that "Leung fails to teach the method of measuring the distance between the first and second authorized device." While Applicants agree with this characterization of Leung, it is believed that the characterization does not go far enough. Not only does Leung fail to teach the limitation of "measuring the distance between the first and second authorized device", as defined in claim 1, but Leung also fails to even suggest the limitation of "allowing, by means of exercising the subright, the second authorized device access to the associated content if the distance between the first authorized device and the second authorized device is smaller than a maximum access distance", also as defined in claim 1.

In reference to Leung's Figures 13 and 14 and the description associated therewith, it is noted that the identifying information or ID about the portable device connected to the user's computer is all that Leung requires in order to check on the suitability of the portable device and then grant the sublicense for exercising the rights such as rendering on the portable device. *See Leung at col. 35-36.* The connection 64 between the two devices shown in Figure 13 and described in col. 35 is not limited by distance in any way. Distance is not measured or even mentioned in describing the connection in Leung. In fact, distance does not even appear to be a concern of Leung. Furthermore, the exemplary digital rights license shown in Leung from cols. 27-29 and the description of the attributes in that license fail to include or mention any item even remotely associated with a distance measurement. Thus, Leung cannot be interpreted as being suggestive of any distance measuring between authorized devices or allowing exercise of rights based on the results of a distance measurement between two authorized devices.

The Office action adds Messerges I to Leung in order to allegedly cure the defects noted above in the teachings of Leung. But Messerges I does not teach, show, or suggest the limitations in claim 1 missing from Leung. Specifically, Messerges I does not teach, show, or

suggest "measuring the distance between the first and second authorized device" and "allowing, by means of exercising the subright, the second authorized device access to the associated content if the distance between the first authorized device and the second authorized device is smaller than a maximum access distance", as defined in claim 1. Instead, Messerges I is concerned with a digital rights management system in which devices communicate over a short-range link. Messerges I does not even remotely suggest that a distance measurement be taken between two devices. Instead, Messerges I simply relies on the ability of devices to establish and maintain communications over the link. The measuring limitation in claim 1 requires an explicit step to be performed. But no such step is expressly or impliedly defined in Messerges I. Thus, Messerges I cannot be interpreted as teaching or suggesting the measuring of distance between a first and second device. Since no measurement is taught in Messerges I, it follows that Messerges I cannot be interpreted as teaching or suggesting the subsequent step of allowing, by means of exercising the subright which is based on the measured distance.

In view of the remarks above, it is believed that Messerges I and Leung, separately and in combination, fail to teach all the elements of claim 1. Since claims 2, 8, and 23-30 are ultimately dependent from claim 1 and include all the limitations thereof, it is also believed that Messerges I and Leung, separately and in combination, also fail to teach all the elements of these dependent claims. Since claims 4, 9, and 11 also include the identical limitations to those discussed above for claim 1, it is also believed that Messerges I and Leung, separately and in combination, also fail to teach all the elements of independent claims 4, 9, and 11.

Claim 31 includes the following limitations:

> *determine a distance between the device and the second device, and*
>
> *distribute the subright to the second device if the distance is less than a predefined maximum distribution distance.*

These limitations are believed to be substantially similar to the limitations discussed above for claim 1. For all the reasons set forth above and in view of the substantial similarity of these limitations, it is also believed that Messerges I and Leung, separately and in combination, also fail to teach all the elements of independent claim 31. Since claims 32-35 are ultimately dependent from claim 31 and include all the limitations thereof, it is believed that Messerges I and Leung, separately and in combination, also fail to teach all the elements of these dependent claims.

Claim 36 includes the following limitations:

> ***transmit a response signal to a first signal that is received from the other device to facilitate determination, at the other device, of a distance between the device and the other device,*** *the response signal being based on the first signal and a secret that is shared between the device and the other device.* [Emphasis supplied].

This limitation is believed to be substantially similar to at least one limitation discussed above for claim 1. For all the reasons set forth above and in view of the substantial similarity of this limitation, it is also believed that Messerges I and Leung, separately and in combination, also fail to teach all the elements of independent claim 36. Since claims 37-40 are ultimately dependent from claim 36 and include all the limitations thereof, it is believed that Messerges I and Leung, separately and in combination, also fail to teach all the elements of these dependent claims.

Claim 41, as amended, now includes the following limitations:

> *the processor is configured to contact the other device to verify that the other device is within a given range of the device before each exercising of the subright to access the content material.*

This limitation is believed to be substantially similar to at least one limitation discussed above for claim 1. For all the reasons set forth above and in view of the substantial similarity of this limitation, it is also believed that Messerges I and Leung, separately and in combination, also fail to teach all the elements of independent claim 41. Since claim 42 is dependent from claim 41 and includes all the limitations thereof, it is believed that Messerges I and Leung, separately and in combination, also fail to teach all the elements of this dependent claim.

Claim 10 includes the following limitation:

> *a content quality parameter is set in the subright, which parameter decides the quality with which the associated content can be rendered by the second authorized device.*

Claims 44 and 45 include limitations substantially similar to the one reproduced above from claim 10.

Neither Leung nor Messerges I include any teaching, showing, or suggestion about a content quality parameter in the subright or sub-license. At col. 34, lines 36-38, Leung states that the sub-license is created to include specific limitations that must be satisfied to render the corresponding content on the portable device. Nowhere is there any suggestion as to what these specific limitations in the sub-license could be. But there is clearly no express or implied suggestion that the specific limitations should specify a quality level with which the content could be rendered on the device, as defined in claim 10. Therefore, it is believed that Messerges

I and Leung, separately and in combination, also fail to teach all the elements of independent claims 10, 44, and 45.

In light of these remarks, it is believed that claims 1, 2, 4, 8-11, 23-42, and 44-45 would not have been obvious to a person of ordinary skill in the art upon a reading of Messerges I and Leung, separately or in combination. Thus, it is submitted that claims 1, 2, 4, 8-11, 23-42, and 44-45 are allowable under 35 U.S.C. §103. Withdrawal of this rejection is respectfully requested.

Rejection of Claims 5-7 under 35 U.S.C. §103

Claims 5-7 stand rejected under 35 U.S.C. §103 as being unpatentable over Leung in view of Messerges I and further in view of Messerges II. This rejection is respectfully traversed.

Claims 5-7 are dependent from independent base claim 4, and include all the limitations of the independent base claim. Claim 4 has been patentably distinguished from Leung and Messerges I above. The defects in the teachings in Leung and Messerges I with respect to claim 4 have been set forth above and pertain equally herein.

The Office action adds Messerges II to the combination of Messerges I and Leung because it is stated in the present Office Action at page 13 that "Leung fails to teach the method of having size of the authorized domain." While Messerges II does appear to teach that a key issuer can act as a domain manager and can "allow a multiple, but limited, number of devices to be provisioned with the same private key", Messerges II lacks any teaching, showing, or suggestion that would cure the defects in the teachings of Leung and Messerges I with respect to the limitations of "measuring the distance between the first and second authorized device" and "allowing, by means of exercising the subright, the second authorized device access to the associated content if the distance between the first authorized device and the second authorized device is smaller than a maximum access distance", as defined in independent base claim 4. Therefore, it is believed that Messerges I, Messerges II, and Leung, separately and in combination, fail to teach all the elements of independent claim 4 and dependent claims 5-7.

In light of these remarks, it is believed that claims 5-7, which include all the limitations of base claim 4, would not have been obvious to a person of ordinary skill in the art upon a reading of Messerges I, Messerges II, and Leung, separately or in combination. Thus, it is submitted that claims 5-7 are allowable under 35 U.S.C. §103. Withdrawal of this rejection is respectfully requested.

Conclusion

In view of the foregoing, it is respectfully submitted that all the claims pending in this patent application are in condition for allowance. Entry of this amendment, reconsideration of this application, and allowance of all the claims are respectfully solicited.

If, however, the Examiner believes that there are any unresolved issues requiring adverse final action in any of the claims now pending in the application, it is requested that the Examiner contact the applicant's attorney at (914) 333-9618, so that a mutually convenient date and time for a telephonic interview may be scheduled for resolving such issues as expeditiously as possible.

In the event there are any errors with respect to the fees for this response or any other papers related to this response, the Director is hereby given permission to charge any shortages and credit any overcharges of any fees required for this submission to Deposit Account No. 14-1270.

Respectfully submitted,

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